

Small Business Administration

§ 125.4

(iii) The contracting officer must consider the contractor's compliance with the commitment in evaluating performance, including for purposes of contract continuation (such as exercising options).

(3) A small business concern submitting an offer shall receive the maximum score, credit or rating under an evaluation factor described in paragraph (g) of this section without having to submit any information in connection with this factor.

(4) A contracting officer shall include a significant evaluation factor for the criteria described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section in a bundled contract or order as defined in § 125.2.

(5) Paragraph (g) of this section may apply to solicitations for orders against multiple award contracts, (including a Federal Supply Schedule or Multiple Award Schedule contract, a Government-wide acquisition contract (GWAC), or a multi-agency contract (MAC)), blanket purchase agreements or basic ordering agreements.

(h) *Multiple award contracts.* (1) Except where a prime contractor has a commercial plan, the contracting officer shall require a subcontracting plan for each multiple award indefinite delivery, indefinite quantity contract (including Multiple Award Schedule), where the estimated value of the contract exceeds the subcontracting plan thresholds in paragraph (a) of this section and the contract has subcontracting opportunities.

(2) Contractors shall submit small business subcontracting reports for individual orders to the contracting agency on an annual basis.

(3) The agency funding the order shall receive credit towards its small business subcontracting goals. More than one agency may not receive credit towards its subcontracting goals for a particular subcontract.

(4) The agency funding the order may in its discretion establish small business subcontracting goals for individual orders, blanket purchase agreements or basic ordering agreements.

(i) *Subcontracting consideration in bundled and consolidated contracts.*

(1) For bundled requirements, the agency must evaluate offers from

teams of small businesses the same as other offers, with due consideration to the capabilities of all proposed subcontractors.

(2) For substantial bundling, the agency must design actions to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(3) For significant subcontracting opportunities in consolidated contracts, bundled requirements, and substantially bundled requirements, see § 125.2(d)(4).

[69 FR 75824, Dec. 20, 2004, as amended at 74 FR 46887, Sept. 14, 2009; 78 FR 42403, July 16, 2013; 78 FR 59798, Sept. 30, 2013; 78 FR 61142, Oct. 2, 2013]

§ 125.4 What is the Government property sales assistance program?

(a) The purpose of SBA's Government property sales assistance program is to:

(1) Insure that small businesses obtain their fair share of all Federal real and personal property qualifying for sale or other competitive disposal action; and

(2) Assist small businesses in obtaining Federal property being processed for disposal, sale, or lease.

(b) SBA property sales assistance primarily consists of two activities:

(1) Obtaining small business set-asides when necessary to insure that a fair share of Government property sales are made to small businesses; and

(2) Providing advice and assistance to small businesses on all matters pertaining to sale or lease of Government property.

(c) The program is intended to cover the following categories of Government property:

(1) Sales of timber and related forest products;

(2) Sales of strategic material from national stockpiles;

(3) Sales of royalty oil by the Department of Interior's Minerals Management Service;

(4) Leases involving rights to minerals, petroleum, coal, and vegetation; and

(5) Sales of surplus real and personal property.

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(d) SBA has established specific small business size standards and rules for the sale or lease of the different kinds of Government property. These provisions are contained in §§121.501 through 121.514 of this chapter.

§ 125.5 What is the Certificate of Competency Program?

(a) *General.* (1) The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)). A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concern(s) possess(es) the responsibility to perform a specific Government procurement (or sale) contract, which includes Multiple Award Contracts and orders placed against Multiple Award Contracts, where responsibility type issues are used to determine award or establish the competitive range. The COC Program is applicable to all Government procurement actions, including Multiple Award Contracts and orders placed against Multiple Award Contracts where the contracting officer has used any issues of capacity or credit (responsibility) to determine suitability for an award. With respect to Multiple Award Contracts, contracting officers generally determine responsibility at the time of award of the contract. However, if a contracting officer makes a responsibility determination as set forth in paragraph (a)(2) of this section for an order issued against a Multiple Award Contract, the contracting officer must refer the matter to SBA for a COC. The COC procedures apply to all Federal procurements, regardless of the location of performance or the location of the procuring activity.

(2) A contracting officer must refer a small business concern to SBA for a possible COC, even if the next apparent successful offeror is also a small business, when the contracting officer:

(i) Denies an apparent successful small business offeror award of a contract or order on the basis of responsibility (including those bases set forth in paragraphs (a)(1)(ii) and (iii) of this section);

(ii) Refuses to consider a small business concern for award of a contract or

order after evaluating the concern's offer on a non-comparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility type evaluation factors (such as experience of the company or key personnel or past performance); or

(iii) Refuses to consider a small business concern for award of a contract or order because it failed to meet a definitive responsibility criterion contained in the solicitation.

(3) A small business offeror referred to SBA as nonresponsible may apply to SBA for a COC. Where the applicant is a non-manufacturing offeror on a supply contract, the COC applies to the responsibility of the non-manufacturer, not to that of the manufacturer.

(b) *COC Eligibility.* (1) The offeror seeking a COC has the burden of proof to demonstrate its eligibility for COC review.

(i) To be eligible for a COC, an offeror must qualify as a small business under the applicable size standard in accordance with part 121 of this chapter.

(ii) To be eligible for a COC, an offeror must have agreed to comply with applicable limitations on subcontracting requirements if the acquisition was set-aside or reserved (*see* §125.6). Whether an offeror has agreed to comply with the limitations on subcontracting is a matter of proposal acceptability or responsiveness. Whether an offeror will be able to comply with the limitations on subcontracting is a matter of responsibility.

(iii) A nonmanufacturer making an offer on a contract for supplies that is set-aside, partially set-aside or reserved for small business (where the small business will be competing against other small businesses for orders) must furnish end items that have been manufactured in the United States by a small business. A waiver of this requirement may be requested under §§121.1201 through 121.1205 of this chapter for either the type of product being procured or the specific contract at issue.

(iv) A non-manufacturer making an offer on an unrestricted procurement or a procurement utilizing simplified acquisition threshold procedures with a cost that does not exceed \$25,000 must